Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1994

INDIANA LUMBERMENS MUTUAL INSURANCE COMPANY,
Petitioner

VERSUS

CITY OF BATON ROUGE,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

GRAYMOND F. MARTIN*
CRAIG A. BOUDREAUX
SMITH, MARTIN, SCHNEIDER & SHIELDS
700 Camp Street
New Orleans, Louisiana 70130
Telephone: (504) 525-0134
Facsimile: (504) 525-0163

Attorney for Petitioner,
INDIANA LUMBERMENS MUTUAL INSURANCE COMPANY
*Counsel of Record

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

43 pp

QUESTION PRESENTED FOR REVIEW

Whether the Louisiana Bail Code provision which sets forth the post-forfeiture notice requirements upon forfeiture of a bail bond, La. Rev. Stat. Ann. § 15:84 A. (1), as applied, violates the due process clause of the Fourteenth Amendment to the Constitution of the United States?

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**PETITION FOR A WRIT OF CERTIORARI
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SUPREME COURT OF THE STATE OF LOUISIANA**

Petitioner, Indiana Lumbermens Mutual Insurance Company ("Indiana"), the plaintiff below, prays that a writ of certiorari issue to review the decision of the Supreme Court of the State of Louisiana.

OPINIONS BELOW

The opinions of the Louisiana State District Court, the Louisiana First Circuit Court of Appeal and the Supreme Court for the State of Louisiana are not reported. The respective decrees of these courts are reproduced in the appendix ("App.") attached hereto. The District Court written reasons for ruling and judgment are reproduced at App. A-1 and App. A-12, respectively, the Court of Appeal opinion is reproduced at App. A-14, and the Supreme Court denial of application for writ of certiorari is reproduced at App. A-22.

JURISDICTION OF THIS COURT

The judgment of the Supreme Court for the State of Louisiana was entered on May 18, 1994. The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. § 1257 on the ground that the statute of the State of Louisiana in question is repugnant to the Constitution of the United States of America.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED IN THE CASE

The Constitution of the United States, Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the

> privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Louisiana Revised Statutes Annotated § 15:84 A. (1) (West 1992), in pertinent part:

> If at the time fixed for appearance of any person before any city . . . court . . . such person fails to appear, the judge, shall enter a judgment decreeing the forfeiture of the bond and against the principal and his sureties in solido for the full amount thereof . . . . After entering the fact of such failure to appear in the court minutes, the clerk of court shall promptly mail notice of the forfeiture to the surety on the bond whose address is on the face thereof and shall execute an affidavit of the mailing and place it in the record. A copy of the notice also shall be mailed to the agent of the surety who posted the bond. Mailing the notice to the agent alone shall not constitute compliance with this Section. Failure to mail the proper notice within sixty days after the entry of the forfeiture shall release the surety from all obligations under the bond.[1]

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[1] The Louisiana Bail Code, LSA-R.S. 15:81 *et seq.*, including this provision, was amended in 1993. The quoted provision, however, was in effect during the time period in which the question presented herein arose and is, therefore, the relevant provision.

STATEMENT OF THE CASE

Petitioner, Indiana Lumbermens Mutual Insurance Company ("Indiana"), provided bail bonds for the release of criminal defendants in 126 individual cases before the City Court of Baton Rouge. Each of the 126 bonds was subsequently forfeited by the court. The procedure followed in executing these forfeitures, particularly the procedure regarding providing notice to the surety on the bonds, has given rise to the constitutional question raised herein. As these 126 individual cases involve identical material facts and the same legal issue, they have been consolidated throughout the proceedings leading to this petition.

Louisiana law requires that, upon forfeiture of a bail bond, post-forfeiture notice be provided the surety on the bond at the address for that surety appearing on the face of the forfeited bond. La. Rev. Stat. Ann. § 15:84. In the instant case, the address of Indiana, as the surety for each individual bond,[3] appears on the face of each bond as 3600 Woodview Trace, P.O. Box 68932, Indianapolis, Indiana. These bonds bear no other surety address. Following forfeiture of each of the 126 bonds involved in this action, the Clerk of Court for the City Court of Baton Rouge mailed notices of the bond forfeitures to 1901 West 86th Street, Indianapolis, Indiana, an address different from that appearing on the face of each bond.

The constitutional issue sought to be reviewed here was first raised in the court of first instance, the City Court of Baton Rouge, on May 9, 1991, by petitioner's timely Motion to Set Aside Judgment of Bond Forfeiture/Petition for Nullity of Judgment addressing 66 of the 126 cases con-

solidated herein. In that pleading, petitioner averred at paragraph 4 that:

> Notice of each defendant's failure to appear and the entry of the judgment of bond forfeiture was not mailed to the surety at the address on the face of the bond within sixty days of defendant's failure to appear as required by LSA-R.S. 15:84 thereby releasing surety from all obligations under the bond.

On August 21, 1991, petitioner filed a Supplemental and Amended Motion adding 37 cases and reiterating and affirming the same grounds as in its May 9, 1991, Motion. On November 20, 1991, petitioner filed a Second Supplemental and Amended Motion adding 23 cases and bringing the total to the current 126 cases. This Second Supplemental and Amended Motion again reiterated and affirmed the earlier grounds for setting aside the individual judgments.

Hearing on the Motions and Petitions was held on December 10, 1991. All 126 cases were submitted by petitioner for the court's review. On June 23, 1992, the trial court denied all of surety's Motions and Petitions and rendered written reasons for its judgment. App. A-1. The ruling of the trial court, however, addressed only 102 of the 126 cases. The trial court signed a judgment to this effect on July 10, 1992. App. A-12.

Indiana timely appealed the decision of the trial court denying its Motions and Petitions to the Louisiana First Circuit Court of Appeal. Petitioner again raised the

constitutional issue of proper notice by averring, at pages 10 - 11 of its appellate brief, that:

> These documents, in conjunction with the testimony of Joyce Madison leads to one conclusion; that the surety's address, although abundantly clear on both the face of the bond and the power of attorney, is not the address to which the notices of bond forfeitures were forwarded. This conclusion is applicable to all one hundred twenty-six (126) cases. This matter was undisputed at the time of the trial and was admitted by the clerks in their testimony before the trial court. Proper notice pursuant to [La. Rev. Stat. Ann. § 15:84] requires that the notice be sent to the address provided on the face of the bond. Since the City failed to strictly comply with [La. Rev. Stat. Ann. § 15:84], the forfeitures in the present case are invalid and should be set aside.

On December 29, 1993, the Court of Appeal, in a 2 to 1 decision, affirmed the ruling of the trial court. App. A-14. On January 27, 1994, petitioner timely applied to the Louisiana State Supreme Court for a writ of certiorari or review. In its writ application petitioner urged that:

> . . . [T]he trial court misinterpreted and misapplied the relevant statute and the [Court of Appeal], on somewhat different grounds, improperly affirmed this action. In violating the statute setting forth the exclusive circumstances under which an appearance may be ordered forfeited, the [Court of Appeal] has undermined the legislature's specific due process protections and,

> consequently, violated Indiana's due process rights. Thus, the statute, as applied by the [Court of Appeal], is unconstitutional.

The Louisiana Supreme Court, by a 5 to 2 vote, denied petitioner's application on March 18, 1994. Indiana now petitions this Honorable Court to reverse the decision of the state courts below.

REASON FOR GRANTING THE WRIT

Certiorari should be granted because La. Rev. Stat. Ann. § 15:84 A.(1), as applied, violates the due process clause of the Fourteenth Amendment to the Constitution of the United States.

This Honorable Court should grant Indiana Lumbermens Mutual Insurance Company's ("Indiana") writ of certiorari to address the unconstitutional application of La. Rev. Stat. Ann. § 15:84 by the courts of the State of Louisiana. Particularly, the application of the subject statute violates petitioner's right, and the right of those similarly situated, to due process as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The Supreme Court of Louisiana refused to review the decision of the First Circuit Court of Appeal affirming the trial court's interpretation of La. Rev. Stat. Ann. § 15:84, despite the fact that the Court of Appeal's decision: (a) conflicts with decisions of this Court, (b) is the result of the court's erroneous interpretation of the statute and application of the Constitutions of the United States and

Louisiana, and (c) represents a gross departure from proper judicial proceedings. This final and improper adjudication of petitioner's constitutional rights by Louisiana's court of last resort has necessitated petitioner filing this Petition for Writ of Certiorari.

Due process of law, as it applies in this case, is guaranteed by the Fourteenth Amendment to the Constitution of the United States. The central meaning of procedural due process is well settled: Persons whose rights may be affected are entitled to be heard; and in order that they may enjoy that right, they must first be notified. *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). The constitutional right to be heard is a *basic* aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. *Fuentes*, 407 U.S. at 80 (emphasis added). Obviously, the right to be heard is rendered meaningless without the equally fundamental right to be notified thereof. The purpose of these requirements is to protect a person's use and possession of property from arbitrary encroachment — to minimize substantially unfair or mistaken deprivations of property. *Id.* at 81. Depriving a person of a right, without notice and opportunity to be heard, offends the notion of due process as guaranteed by the Constitution of the United States.

In raising a constitutional due process challenge, the claimant must show the existence of some property interest which has been adversely affected by state action. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972). Any significant taking of property is within the purview of the due process clause. When protected in-

terests are implicated, the right to some kind of prior hearing is paramount. *Roth*, 408 U.S. at 569. The property which petitioner was deprived of by the State of Louisiana, through its political subdivision, the City of Baton Rouge, is significant. The bonds forfeited were in various amounts totalling thousands of dollars.[2]

Moreover, a juridical person, such as a company or corporation, is a "person" as used in the due process clause of the Fourteenth Amendment to the Constitution. *Grosjean v. American Press Co.*, 297 U.S. 233, 244 (1936). As a mutual insurance company, Indiana is such a person for purposes of due process analysis. Consequently, Indiana's right to procedural protection against deprivation of its property is protected by the due process clause. Accordingly, Indiana is "entitled to stand equally before the law and to be accorded due process of law." *Nomey v. State of Louisiana*, 315 So. 2d 709, 713 (La. 1975).

Indiana fully realizes that, as set forth by this Court, due process is a flexible standard that calls for such procedural protections as the particular situation demands. *Morrisey v. Brewer*, 408 U.S. 471 (1972). There are "extraordinary situations," such as the towing of illegally parked cars, that justify postponing notice and an opportunity for a hearing. *Breath v. Cronvich*, 729 F.2d 1006,

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[2] The decision of the Louisiana Supreme Court has implications much broader than the losses suffered by Indiana as a direct result thereof. Indiana and other bail bond sureties are, at any given time, at risk for hundreds of thousands of dollars. This risk is a calculated business risk and is obviously commensurate with the returns these businesses realize. However, the court's decision here skews the risk analysis by significantly increasing the risk that a surety may be liable for an obligation it did not contract for.

1010 (5th Cir. 1984), *citing Fuentes.* Thus, courts have countenanced deprivation of property interests without notice or an opportunity for a prior hearing when: (1) the deprivation is directly necessary to secure an important government or general public interest, (2) there is a special need for very prompt action, and (3) the person initiating the deprivation is a government official responsible for determining, *under the standards of a narrowly drawn statute,* that it was necessary and justified in the particular instance. *Breath,* 729 F.2d at 1010 (emphasis added).

In enacting the statutes governing the forfeiture of bail bonds, the Louisiana legislature recognized that bond forfeitures fall within this category of "extraordinary situations." The statutory requirements express a legislative intent for immediate action, while the probability of locating the defendant is greater. *State v. DeLaRose,* 391 So. 2d 842, 843 (La. 1980). Requiring prompt and adequate notice to the surety on the bond enhances the surety's chances of locating the defendant and surrendering him to the court for trial, a desirable objective from the point of view of both the surety and the state. *State v. Bullock,* 412 So. 2d 1059, 1060 (La. 1982). The legislature, however, balanced the objective of prompt and adequate notice with the compelling state interest of immediately obtaining a bond forfeiture by allowing the requisite notice to be provided the surety *post-forfeiture.*

The legislature, as a result of its recognition of the interests involved, properly enacted a narrowly drawn statute setting forth the *exclusive* circumstances under which a bail bond may be forfeited. Considering the relative and competing interests of the various parties, the state

legislature provided each adequate due process by enacting La. Rev. Stat. Ann. § 15:84. By strictly adhering to this statute, as required by law,[3] the state may obtain a valid judgment of forfeiture.

La. Rev. Stat. Ann. § 15:84 A. (1) (West 1992) provides, in pertinent part:

> [T]he clerk of court shall promptly mail notice of the forfeiture . . . *to the surety on the bond whose address is on the face thereof* and shall execute an affidavit of the mailing and place it in the record. A copy of the notice also shall be mailed to the agent of the surety who posted the bond. Mailing the notice to the agent alone shall not constitute compliance with this Section. Failure to mail the proper notice within sixty days after the entry of the forfeiture shall release the surety from all obligations under the bond. (Emphasis added.)

The intent of the legislature in enacting this statute was to require that post-forfeiture notice be sent to the surety at the address appearing on the face of the bond. Numerous Louisiana courts addressing this requirement have agreed that the requisite notice is to the surety at the address appearing on the face of the bond. *See, e.g., State v. Coran,* 386 So. 2d 914 (La. 1980); *State v. Canto,* 600 So. 2d 152 (La. App. 3 Cir. 1992). The requirement is both fair and logical as the party seeking forfeiture need only look to the bond in its possession in order to acquire the proper address and comply with the statute, thereby obtaining a

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[3] In order to obtain a judgment of bond forfeiture against a surety, the state must comply strictly with the terms of the relevant statute. *State v. Hathaway,* 403 So. 2d 737, 739 (La. 1981).

valid forfeiture. The surety is equally protected as it can easily indicate the proper address when issuing each individual bond.

In the instant case, contrary to the clear language of the statute, the Clerk of Court for the City Court of Baton Rouge sent post-forfeiture notice to an address *not* appearing on the face of the bonds. Upon review of this improper action, the trial court misinterpreted and misapplied the relevant statute and the Court of Appeal, on somewhat different grounds, affirmed the decision. In violating the statute setting forth the exclusive circumstances under which an appearance bond may be ordered forfeited, the Court of Appeal, and the state Supreme Court in denying certiorari, have undermined the specific due process protections put in place by the state legislature and, consequently, violated Indiana's due process rights. As a result, the subject statute, as applied by the courts of the State of Louisiana, is unconstitutional.

Specifically, the decision of the trial court in the instant case is illogical and offensive to the concept of due process. Following the trial court's reasoning, if the address on the face of a bail bond is incorrect and the clerk mails the notice to that address, notice is proper as the statute has been strictly complied with. Indiana does not object to this proposition. However, the trial court then decides that if the correct address is provided on the face of a bail bond and the clerk then mails notice to a different address, such notice is also proper pursuant to the statute. Thus, by the trial court's reasoning, the clerk could send the requisite notice to *any* address of its choosing and such notice would be proper. Obviously, this result is nonsen-

sical in terms of notice sufficient to satisfy the due process clause of the Fourteenth Amendment.

Likewise, the majority decision of the Court of Appeal, while not so obvious, is equally offensive to due process analysis. The court undermines the intent of the state legislature by refusing to recognize that the notice requirement set forth in the narrowly drawn statute is the *exclusive* method for service. The Court of Appeal takes exception to the trial court's reasoning and correctly concludes that the statute requires that notice to the surety be provided at the address that appears on the face of the bond. At this point, however, the court goes astray by asserting that if *actual notice* to the surety is achieved, the notice requirements of the statute are met. This reasoning is offensive to both the due process clause of the Fourteenth Amendment and the legislative intent expressed in La. Rev. Stat. Ann. § 15:84, and introduces an inappropriate post facto analysis to this area of law.

As stated above, the Louisiana legislature, in enacting the subject statute, provided a narrowly drawn scheme whereby reference to the bond evidencing the surety's obligation would provide all information necessary to adequately protect the interests and due process rights of all concerned. The City of Baton Rouge departed from this scheme by mailing the subject notices to an address *not* appearing on the face of the bonds. Based on insufficient evidence in the record that 50 forfeitures notices and accepted in this manner in the past were actually paid by someone whose identity is unknown, the Court of Appeal determined *after the fact* that if these notices of forfeiture, mailed incorrectly, in violation of the state statute, and

contrary to the intent of the legislature were actually paid by *anyone*, then notice to the *surety* was sufficient. The state legislature did not provide for service of notice by any means resulting in actual service. It did provide for a procedure that is logical, provides adequate constitutional protections to all concerned, and must be strictly complied with.

The application of La. Rev. Stat. Ann. § 15:84 by the courts of this state, allowing any means of post-forfeiture notice, even where the record is devoid of evidence of actual notice, violates the legislature's intent in narrowly drawing the statute and, accordingly, deprives Indiana of the due process protections granted sureties by the statute and guaranteed by the Constitution of the United States. Consequently, this Honorable Court's review of the decision of the Supreme Court of the State of Louisiana is appropriate.

CONCLUSION

For the above reason, this Court should grant certiorari.

Respectfully submitted,

GRAYMOND F. MARTIN*
CRAIG A. BOUDREAUX
SMITH, MARTIN, SCHNEIDER
& SHIELDS
700 Camp Street
New Orleans, Louisiana 70130
Telephone: (504) 525-0134
Facsimile: (504) 525-0163

Attorney for Petitioner,
INDIANA LUMBERMENS MUTUAL
INSURANCE COMPANY
*Counsel of Record

APPENDIX A

IN RE:	SUIT #:_____
BOND FORFEITURES AGAINST INDIANA LUMBERMENS MUTUAL INSURANCE COMPANY IN BATON ROUGE CITY COURT	CITY COURT OF BATON ROUGE CITY OF BATON ROUGE STATE OF LOUISIANA

WRITTEN REASONS FOR RULING

This matter came up for hearing on December 10, 1991, pursuant to Indiana Lumbermens Mutual Insurance Company's Motions to Set Aside Judgment of Bond Forfeiture and Petition for Nullity of Judgment.

FACTS

Indiana Lumbermens agreed to act as surety on appearance bonds concerning the following defendants:

DEFENDANT	DATE OF JUDGMENT FORFEITING APPEAR-ANCE BOND	SUIT #
Larry Titus	9-27-89-	30526A
Hebert Cash	9-27-89	43204
Henry Graham	9-27-89	51485A
Consuelo Martinez	9-27-89	55363
Larry Case	10-4-89	BR5761976
Anthony Windon	10-6-89	67102
Lawrence Batiste	10-11-89	BRO5699610
Anthony Windom	10-12-89	67102C
Dennis Strong	11-7-89	75272
Stanley Williams	11-27-89	69364
Dennis Strong	11-28-89	75272A
Robert Thomas	12-20-89	82478
Ginger Cole	12-26-89	76661A
Patricia Hunter	1-30-90	91278A
Henry Mosley	2-13-90	BR6170010
John Leonida	2-16-90	BR6100706
James Hamilton	2-26-90	39366
Shelton Simpson	2-28-90	BR6240032
Junnie Tipton	2-28-90	BR5982362
Louis High	2-28-90	BR4508475

DEFENDANT	DATE OF JUDGMENT FORFEITING APPEARANCE BOND	SUIT NUMBER
Chester Adams	2-28-90	BR6044754
Linda Jeffery	2-28-90	BR6001365
Ronald Tidwell	3-2-90	BR6199734
Anthony Tolbert	3-7-90	32224A
Vonda Taylor	3-16-90	65789
Vonda Taylor	3-29-90	65789A
Terry Moody	4-6-90	BR5930551
Danny Windon	4-16-90	67102
Denny Windom	4-30-90	617102B
Samuel Uselton	5-3-90	BR5877686
Price Garrett	5-3-90	BR6001041
Lynette Johnson	5-16-90	25379A
Cathleen Smith	5-21-90	BR6364444
Ryan Rome	6-1-90	2192
Richard Alexander	6-15-90	BR6363280
Thomas Marion	6-15-90	BR06228364
Sherrail Murray	6-18-90	16378
Robert Mosley	6-18-90	53207
Alfred Harris	6-21-90	BR6006136
Ricky Pitts	6-27-90	BR6198194

DEFENDANT	DATE OF JUDGMENT FORFEITING APPEAR-ANCE BOND	SUIT NUMBER
Barry Cauley	7-1-90	F-30100
James Brown	7-2-90	BR6286335
Ronald Snowden	7-3-90	F-39213
Rush Teshar	7-11-90	72098
Davis Trask	7-11-90	75533
Ronald Snowden	7-13-90	39213A
Patricia Wilson	7-17-90	37309B
Kevin Mitchell	7-20-90	BR6498306
David Rogers	7-20-90	BR6029985
Barry Cauley	7-23-90	30100A
John Fultz	7-26-90	BR6141520
David Tureau	7-27-90	10459
Jim Tooley	7-27-90	BR5334405
Jimmy Franks	7-27-90	BR6166211
Albert Gaudin	8-1-90	BR5810792
David Wardlow	8-7-90	BR6371536
Shannon Shelf	8-8-90	50577
Dennis Hunt	8-9-90	BR6302365
David Roberts	8-9-90	BR6505004
Michael Rickett	8-13-90	17162

DEFENDANT	DATE OF JUDGMENT FORFEITING APPEARANCE BOND	SUIT NUMBER
Emile Lathers	8-16-90	BR5234412
Ken Armstead	8-22-90	48183B
Shannon Self	8-23-90	50577A
William Butler	8-23-90	14654
Allen Briggs	8-23-90	21420
Kevin McNair	8-31-90	F-81040
James Creel	9-6-90	F-42584
Darryl Bell	9-10-90	31275
Donna Cummings	9-10-90	90-CR-003688
Patricia Gordon	9-10-90	F-81927
Larry Scott	9-11-90	BR6234465
George W. Smith	9-11-90	F-18454
Charles Joseph	9-11-90	BR5962040
Steven Cooper	9-12-90	20035A
James Parker	9-12-90	BR6160222
Michael McAllister	9-12-90	BR6112201
Andrew Owens	9-17-90	90-CR-034438
Vickie Hunt	9-17-90	F-492
Kevin McNair	9-24-90	81040A
Thomas Hunter	9-25-90	BR06632942

DEFENDANT	DATE OF JUDGMENT FORFEITING APPEARANCE BOND	SUIT NUMBER
Michael Harrison	9-28-90	F-11224
Charlene McGhee	10-4-90	F-28515
Kristen Sterling	10-9-90	17209
Ernest Toppings	10-12-90	3120
David LeBlanc	10-18-90	F-12876
Philip Bourgeoise	10-22-90	90-CR-45268
Charles Thomas	11-8-90	90-CR-013388
Ricky Earl Hicks	11-15-90	3209
Bryan Johnson	11-20-90	72891
Lester Bryant	11-26-90	29250
Katherine Hamilton	11-27-90	64537
Michael Daniels	11-27-90	90-CR-013426
Elnora Jacobs	12-3-90	90-CR-000856
Ginger Cole	12-4-90	76661
Theresa Ross	12-7-90	89-CR-015259
Craig Williams	12-12-90	90-CR-041013
Angela Hawkins	12-17-90	90-CR-047992
Theresa Ross	12-17-90	90-CR-07201
James Johnson	12-20-90	33351
Kelvin Collier	12-26-90	89-CR-074084
Ronnie Ennis	1-3-91	89-CR-084649
Alberto Depino	1-15-91	90-CR-077513

In each of these matters, after the court rendered judgment forfeiting the appearance bond, the clerk promptly mailed notice of the judgment to Indiana Lumbermens. This notice was mailed to their address at 3901 W. 86th St. Indianapolis, Indiana.

INDIANA LUMBERMENS' ARGUMENT

Indiana Lumbermens claims that notice of the judgments forfeiting the appearance bonds was not mailed to it in accordance with La. R.S. 15:84 and that, consequently, those judgments are not enforceable against it.

La. R.S. 15:84 provides in pertinent part:

> ...After entering the fact of such failure to appear in the court minutes, the clerk of court shall promptly mail notice of the forfeiture to the surety on the bond whose address is on the face thereof...Failure to mail the proper notice within sixty days after the entry of the forfeiture shall release the surety from all obligations under the bond...

Specifically, Indiana Lumbermens contends that this provision requires the clerk to send notice of the bond forfeitures to the address appearing on the face of the bond and that the clerk's failure to send notice to that particular address in this case relieves the surety of all obligations under the bond.

THIS COURT'S POSITION ON LA. R.S. 15:84

Counsel for Indiana Lumbermens cites *American*

Bankers Ins. Co. v. State, 581 So.2d 313 (La. App. 1 Cir. 1991) as authority for its claim. In that case, the First Circuit indeed stated that a very similar provision required "notice to the address on the bond." However, that was not what the court held. The holding of *American Bankers* is as follows:

> When the surety's agent places the incorrect address of the surety on the face of the bond and the clerk DOES mail notice to the surety at that incorrect address, then the clerk has sufficiently complied with the notice requirement of the statute, and the surety is not relieved of its obligations under the bond, even when that notice is returned to the clerk undelivered.

It is clear, therefore, that *American Bankers* is distinguishable on its facts. There, the surety's agent placed the incorrect address of the surety on the face of the bond. The clerk mailed notice to the surety at that incorrect address. The case is not clear as to whether the clerk was given OTHER addresses for the surety. The court concluded that mailing notice to the address on the face of the bond constituted compliance with the statute. *American Bankers,* at 314. The statement which counsel relies upon was not necessaary to answer the issue in that case.

The court also remarked that it was the surety's own conduct which was responsible for notice being sent to the improper address. The court was apparently referring to the fact that it was the surety's agent, acting on behalf of the surety, who had placed that address on the bond. *American Bankers,* at 314. In addition, the court apparent-

ly concluded that the surety was bound by the action of its agent.

It is important to note that in *American Bankers*, the First Circuit recognized the ease with which the clerk could have notified the surety, a foreign insurer, through serving the notice upon the Secretary of State. La. R.S. 22:985 designates the Secretary of State as the agent for service of process on foreign insurers. However, the Court concluded that the statute did not require the clerk to notify the surety in that way. *American Bankers,* at 314. The court specifically stated:

> ...we will not read this statute as requiring actual notice...Due process requires not actual notice but a method "reasonably calculated" to provide actual [notice].

Based on both the plain wording of the statute and jurisprudential interpretation, this Court finds, as a matter of law, that the clerk must simply mail notice TO THAT PARTICULAR SURETY whose address appears on the face of the bond. The statute does not require that the notice be sent to any particular address.

Therefore, the Clerk's mailing notice to Indiana Lumbermens at an address other than the one appearing on the face of the bond did not necessarily relieve it of all obligations under the bonds. The only question remaining is whether Indiana Lumbermens in fact received adequate notice of the bond forfeitures.

DID INDIANA LUMBERMENS RECEIVE ADEQUATE NOTICE?

Based upon the evidence presented, the Court feels that the procedure used by the Baton Rouge City Court's clerks office was reasonably calculated to provide Indiana Lumbermens with actual notice. Testimony clearly shows that it had been the standard procedure of that office to send notice of all bond forfeitures to Indiana Lumbermens at their 3901 W. 86th St. address for over three years. In the past, whenever notice was mailed to them at this address such notice was undoubtedly received since the bonds were always promptly paid.

CONCLUSION

The evidence clearly shows that the clerk's office made numerous attempts to discover the proper address to send notice of the bond forfeitures. When problems first began to arise the clerk's office contacted Indiana Lumbermens requesting the proper address to send notice. On March 26, 1991, the office received a fax transmission stating that all notice of bond forfeitures should be sent to **National American Insurance Company at 3901 W. 86th Street.** Less than a month later, another correspondence was sent to the clerk's office requesting that notice should be sent to **Indiana Lumbermens at P.O. Box 68932 Indianapolis, Indiana.** On May 15, 1991, the clerk's office received yet another correspondence advising them to send all mail regarding bond forfeitures to **Underwriters Surety, Inc. at P.O. Box 688508 Indianapolis, Indiana.** After receiving this notice, due to the confusion of names **(National American, Indiana Lumbermens, and Underwriters Surety)**

and addresses (3901 W. 86th Street, P.O. Box 68932, and P.O. Box 688508), out of an abundance of caution, the clerk contacted the Commissioner of Insurance, who finally informed her that notice should be sent to Indiana Lumbermens at P.O. Box 68600 Indianapolis, Indiana. The clerk's office should be commended for it's efforts in attempting to make sure that Indiana Lumbermens receive actual notice. For the reasons cited above, this Court concludes that Indiana Lumbermens was given sufficient notice to satisfy the standards of due process as required by law. Accordingly judgment is rendered in favor of the City of Baton Rouge and against Indiana Lumbermens.

Judgment will be signed when submitted.

At Baton Rouge, Louisiana, this 23 day of June, 1992.

/s/ Rosemary Pillow

Judge, Division D

FILED JUNE 23, 1992

SIGNED /s/Debra Green

Chief Dpy. Clerk of City Court

A TRUE COPY June 23, 1992

/s/ Debra Green

Chief Dpy. Clerk of City Court

APPENDIX B

IN RE:	SUIT NUMBER:
BOND FORFEITURES AGAINST INDIANA LUMBERMENS MUTUAL INSURANCE COMPANY IN BATON ROUGE CITY COURT	CITY COURT OF BATON ROUGE CITY OF BATON ROUGE STATE OF LOUISIANA

FILED:_____ _____

DEPUTY CLERK

JUDGMENT

This matter came up for hearing on December 10, 1991, pursuant to Indiana Lumbermens Mutual Insurance Company's Motions to Set Aside Judgments of Bond Forfeiture/Petitions for Nullity of Judgment and Indiana Lumbermens Mutual Insurance Company's Supplemental Amended Motions to Set Aside Judgments of Bond Forfeiture/Petitions for Nullity of Judgment in the following cases:

See list of cases in "title Written Reasons for Ruling" (App. A, A-1)

The Court considering the law and evidence to be against Indiana Lumbermens Mutual Insurance Company.

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of the City of Baton Rouge, declaring the bond forfeitures rendered in the above mentioned cases, are hereby maintained, and the surety's Motions to Set Aside Judgments of Bond Forfeiture/Petitions for Nullity of Judgment and the surety's Supplemental and Amended Motions to Set Aside Judgments of Bond Forfeiture/Petitions for Nullity of Judgment are denied.

BATON ROUGE, LOUISIANA, this 16th day of July, 1992.

/s/ Rosemary Pillow

JUDGE

sl/brjmt

F I L E D

JUL 10 1992

Chief Dy Clerk of City Court

APPENDIX C

IN RE:	COURT OF APPEAL
BOND FORFEITURES AGAINST INDIANA LUMBERMENS MUTUAL INSURANCE COMPANY IN BATON ROUGE CITY COURT	FIRST CIRCUIT STATE OF LOUISIANA NO. 92 CA 1803

ON APPEAL FROM THE CITY COURT OF BATON ROUGE, (NO. 2192), PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA, HONORABLE ROSEMARY PILLOW, JUDGE PRESIDING

DEC 29 1993

BEFORE: WATKINS, SHORTESS, FOGG, JJ.

WATKINS, J.

The City of Baton Rouge (City) procured judgments against Indiana Lumbermens Mutual Insurance Company (Indiana Lumbermens) ordering the forfeiture of more than 100 appearance bonds in criminal proceedings in which the defendants failed to make scheduled appearances.[1] Indiana Lumbermens filed motions to set aside the judg-

[1] We have attached as an appendix a copy of the judgment in the captioned suit which lists the suit numbers for the bond forfeitures that are the subject matter of this case.

ments of bond forfeiture/petitions for nullity of judgment, which were consolidated. The trial court denied the surety's motions/petitions and ruled that in 102 of the cases, the bond forfeitures were proper.

Indiana Lumbermens appeals on the ground that the City did not provide it with the proper statutory notice of the judgments of forfeiture. Finding no merit to Indiana Lumbermens' assignments of error, we affirm.

It is undisputed that Indiana Lumbermens provided appearance bonds for the defendants involved in all of these cases. Some of the bonds give the name and address of the surety on the face of the bond as "Indiana Lumberman Ins. Co., 3600 Woodview Trace, Indianapolis, IN." Other bonds name "Indiana Lumbermens" as the surety but do not have any address for it on the face of the bond. However, each of the bonds has an attached power of attorney which lists Indiana Lumbermens' address as "3600 Woodview Trace, P. O. Box 68932, Indianapolis, IN 46266."

It is undisputed that the clerk of city court sent the notices of bond forfeiture to Indiana Lumbermens at 3901 W. 86th, Indianapolis, IN 46268. The notices were sent by certified mail, and they were signed for by persons apparently representing Indiana Lumbermens. The deputy clerk of court in charge of collecting bond forfeitures testified that over 50 forfeitures noticed and accepted in this manner were paid by the surety.

Indiana Lumbermens first assigns as error the trial court's conclusion that the statute governing bond

forfeitures does not require the notice of the bond forfeiture to be sent to the surety at the address provided on the face of the bond or the face of the power of attorney. In support of its contention, Indiana Lumbermens cites *American Bankers Insurance Company v. State,* 581 So.2d 313 (La. App. 1st Cir. 1991). In that case this court was called upon to interpret the following pertinent language of LSA-R.S. 15:84 A. (1)

> After entering the fact of such failure to appear in the court minutes, the clerk of court shall promptly mail notice of the forfeiture to the surety on the bond whose address is on the face thereof and shall execute an affidavit of the mailing and place it in the record. A copy of the notice also shall be mailed to the agent of the surety who posted the bond. Mailing the notice to the agent alone shall not constitute compliance with this Section. Failure to mail the proper notice within sixty days after the entry of the forfeiture shall release the surety from all obligations under the bond.

In the instant case the trial court correctly distinguished *American Bankers* on the facts, but incorrectly, in our opinion, made its own interpretation of the statute. The trial judge stated, "Based on both the plain wording of the statute and jurisprudential interpretation, this Court finds, as a matter of law, that the clerk must simply mail notice TO THAT PARTICULAR SURETY whose address appears on the face of the bond. The statute does not require that the notice be sent to any particular address."

Instead, we interpret the language of the statute as requiring that notice to the surety be provided at the address that appears on the face of the bond. However, if actual notice to the surety is achieved, the notice requirements are met. The purpose of enforcing strict compliance with the notice provisions in the bond forfeiture statutes is to provide prompt and adequate notice so the surety can quickly identify its bond obligation, locate the defendant, and surrender him to court for trial. *State v. Bullock,* 412 So.2d 1059, 1060 (La. 1982); *State v. Canto,* 600 So.2d 152, 154 (La. App. 3d Cir. 1992). In *American Bankers,* 581 So.2d at 314, we held that "[s]trict compliance does not necessarily equate to strict construction. . . ." The requirements of the notice provisions are not sacrosanct; a bond forfeiture will be upheld if the surety is provided prompt and adequate notice and no prejudice to the surety is shown. *See State v. Bullock.*

In *State v. Hartley,* 614 So.2d 211 (La. App. 3d Cir. 1993), *State v. Canto,* and *American Bankers,* the courts held that mailing the notice of forfeiture to the address on the face of the bond was sufficient to meet a due process challenge, even where actual notice was not received, because that procedure was "reasonably calculated" to provide actual service. We are aware of no jurisdprudence which holds that notice to an address obtained by the clerk, which results in actual notice to the surety, is insufficient to meet the requirements of LSA-R.S. 15:84. To the contrary, in *State v. Hartley,* the court implies that if the clerk of court knew of an address for the surety which was more recent than that on the face of the bond but deliberately disregarded it, the surety's entitlement to due process might be violated.

Accordingly, we find no merit in appellant's contention that it failed to receive "proper notice" of the bond forfeitures, thus barring the forfeitures for failure to comply with statutory notice requirements.

The appellant's second assignment of error is that the trial court erred in allowing the City to introduce parol evidence in an attempt to prove "actual *service* of the bond forfeitures on the surety." (Emphasis ours.)

The appellant misstates the proof allowed in the instant case. The parol evidence admitted by the trial court was allowed as proof of *actual notice,* not proof of *service.* All of the cases cited by appellant deal with the prohibition of parol evidence to vary the service of citation evidenced by a sheriff's return. Suffice it to say that those cases are inapposite here. There was no error on the part of the trial court in admitting parol evidence in the instant case, along with the documentary evidence of the receipts of the notices.

Finally, appellant argues that the trial court erred in its conclusion that the surety received notice of the bond forfeitures when the evidence clearly demonstrates that an entity other than the surety received the notices. Although the appellant labels the trial court's decision on this issue as a "legal conclusion," it was a factual determination on the trial court's part.

It is undisputed that the notices mailed to the W. 86th Street address were received without protest by Indiana Lumbermens for an extended period of time. There is documentary evidence in the record that the certified mail

receipts were signed for by various persons, and there is no proof of forgeries or unauthorized signatures. Identical mailings resulted in numerous payments of the forfeitures. Thus, there is adequate support in the record for two permissible views: that there was actual notice to Indiana Lumbermens or that there was actual notice to another entity. When conflicting evidence creates two possible views of the evidence and the fact finder's choice between the views is reasonable in light of the entire record, an appellate court may not reverse merely because it would have chosen the alternative view. *Rosell v. ESCO,* 549 So.2d 840, 844 (La. 1989); *Lirette v. State Farm Insurance Company,* 563 So.2d 850, 855 (La. 1990).

Accordingly, we find that the City was entitled to forfeiture of the bonds, and we affirm the judgment of the trial court. Appellant is cast for all costs of this appeal.

AFFIRMED.

CITY COURT OF BATON ROUGE

VERSUS

INDIANA LUMBERMEN'S MUTUAL INSURANCE COMPANY

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 92 CA 1803

ON APPEAL FROM THE CITY COURT OF BATON ROUGE, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA, NUMBER 2192, ETC., HONORABLE ROSEMARY PILLOW, JUDGE PRESIDING

BEFORE: WATKINS, SHORTESS, AND FOGG, JJ.

FOGG, JUDGE, dissenting.

La.R.S. 15:84 requires, in pertinent part, that the clerk of court "mail notice of the forfeiture to the surety on the bond whose address is on the face thereof . . . . A copy of the notice also shall be mailed to the agent of the surety who posted the bond. Mailing the notice to the agent alone shall not constitute compliance with this Section." The courts have consistently held that a valid forfeiture requires strict compliance with the terms of the statute regulating bond forfeitures. **State v. Hathaway,** 403 So.2nd 737 (La.1981). Furthermore, the courts have interpreted the above language as requiring that both the surety and the agent be mailed notice of the forfeiture of the bond *at the address which appears on the bond. See* **State v. Coran,** 386 So.2d 914 (La.1980); **State v. Hartley,** 614 So.2d 211 (La.App. 3rd Cir.1993); **State v. Canto,** 600 So.2d 152

(La.App. 3rd Cir.1992); **American Bankers Ins. Co. v. State**, 581 So.2d 313 (La.App. 1st Cir. 1991).

In the instant case, it is undisputed that after each bond was forfeited, the Clerk of Court for the City Court of Baton Rouge sent notice of the forfeiture to 3901 W. 86th, Indianapolis, Indiana. It is further undisputed that the address on West 86th Street was not shown as the address of the surety on the face of any of the bonds. In my opinion, the specified method of giving notice prescribed by this statute is exclusive. Therefore, the notice requirements were not complied with and the forfeitures are invalid.

I respectfully dissent.

APPENDIX D

THE SUPREME COURT OF THE STATE OF LOUISIANA

CITY OF BATON ROUGE

VS. NO. 94-C - 0245

INDIANA LUMBERMENS
MUTUAL INSURANCE
COMPANY

— — — — — —

IN RE: East Baton Rouge City; - Plaintiff(s); Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Fourth Circuit, Number 92CA-1803; Parish of East Baton Rouge 19th Judicial, District Court Div. "D" Number 2192

— — — — — —

March 18, 1994

Denied.

WFM

PFC

JCW

HTL

PH

KIMBALL & ORTIQUE, JJ., would grant the writ.

DENNIS, J., not on panel.

Supreme Court of Louisiana
March 18, 1994

/s/ Illegible

Clerk of Court
For the Court